

APPEAL NO. 042185
FILED OCTOBER 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the third and fourth quarters.

The claimant appealed, contending that he had shown a good faith effort to obtain employment commensurate with his ability to work by returning to work in a position relatively equal to his ability to work. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the third and fourth quarters. The claimant contended that during the relevant qualifying periods, he had returned to work in a position relatively equal to his ability to work at a tire shop.

The claimant had sustained a severe crush injury (with amputation of one or more finger tips) of his left hand. The claimant had returned to work at a tire shop working four and five hours a day which was within his treating doctors restrictions. A carrier required medical examination (RME) doctor, after viewing a surveillance video tape was of the opinion that the claimant could return to work eight hours a day with certain restrictions on use of his left hand and a 60-pound lifting restriction. The hearing officer found the RME doctor's report more persuasive (in light of the video) than the treating doctor's report and found the claimant "self-limited his work to only 4 hours per day."

Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. Whether the claimant met the requirements of Rule 130.102(d)(1) to show a good faith effort was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying

periods and that he is not entitled to SIBs for the third and fourth quarters are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge